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IN THE

Supreme Court of the United States

October Term, 1942

Nos. ~~907 - 908~~ 38 - 39

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Colgate-Palmolive-Peet Company, respectfully prays that a Writ of Certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Third Circuit entered in the above causes affirming the judgments of the United States District Court for the District of Delaware. A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith.

Summary and Short Statement of the Matter Involved.

These are suits to recover taxes paid under protest under Section 602½(a) of the Revenue Act of 1934, the pertinent part of which reads as follows:

> "Sec. 602½. Processing Tax on Certain Oils.
>
> (a) There is hereby imposed upon *the first domestic processing* of coconut oil, sesame oil, palm oil, palm-kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. * * * For the purposes of this section the term 'first domestic processing' means *the first use in the United States*, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed * * *."*

On August 17, 1934, the Commissioner of Internal Revenue issued Regulations 48 under Section 602½. Subdivision (l) of Article 1 of the Regulations interprets the phrase "the first domestic processing" as used in Section 602½ as follows:

> "(l) First domestic processing means the first use in the United States *on or after the effective date of the Act*. At all times in these regulations, the term processing or first domestic processing will be deemed to be synonymous with 'use' or 'first use in the United States *on or after* the effective date', respectively, and will include the meanings implied in the latter terms by subdivision (k) above."

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* Where italics are used in quotations, it will be understood that the emphasis is ours unless otherwise noted.

All the facts with reference to the oils involved in these suits are stipulated (Rec. pp. 10-24, 26-38).

On May 10, 1934, the day on which Section 602½ became effective, petitioner had on hand oils specified in that section which had already received from one to four processings within the United States, all of which processings are recognized in Regulations 48 (and by the Court below) as domestic processings within the meaning of Section 602½. However, pursuant to the above regulation the Commissioner levied a tax under Section 602½ on the further processing of those oils after May 10, 1934, although the processing so taxed was in each case either the second, third, fourth or fifth processing in the United States. It is the taxes so levied which petitioner seeks to recover.

The first suit involves taxes in the amount of $1,476,507.81 paid by petitioner with respect to the further processing during the period May 10, 1934—April 30, 1935, inclusive, of oils which had already received one to four domestic processings prior to the effective date of the statute, each of which processings constituted a use of the oil in the manufacture of articles intended for sale. Similarly, the second suit involves $885,874.56 of taxes paid by plaintiff with respect to the further processing during the period May 1, 1935—January 31, 1937, inclusive, of similar processed forms of oils which had likewise been first used (first domestically processed) prior to the effective date of the statute, in the manufacture of articles intended for sale. Both suits were brought pursuant to Paragraph 20 of Section 24 of the Judicial Code, as amended February 24, 1925 (43 Stat. 972 Ch. 309, 28 U. S. C. A. 41 (20)).

The suits were consolidated for trial upon Stipulations of Facts. The District Court rendered its opinion on March 20, 1941 (Rec. pp. 1-8), reported in 37 F. Supp. 794,

and held that the Act should be construed to mean that the tax was to be levied on the "first domestic processing" after the effective date of the Act notwithstanding there had been actual domestic processings before that time and that, consequently, the taxes had been properly levied and collected. On April 23, 1941, judgments were entered dismissing the complaints (Rec. pp. 1, 25) and on July 19, 1941, appeals were taken to the Circuit Court of Appeals for the Third Circuit.

On March 31, 1942, the Circuit Court of Appeals filed its unanimous opinion sustaining the District Court, and judgment of affirmance was entered. Thereupon, on appellant's petition, a rehearing was had and on August 21, 1942, the Circuit Court of Appeals filed a *majority* opinion again sustaining the District Court and judgment of affirmance was again entered. Judge MARIS, who had concurred in the original opinion and affirmance, dissented and filed a separate opinion. Opinions reported in 130 F. (2d) 913.. A Petition for a Second Rehearing was entertained but denied by Order Entered November 11, 1942. By Order dated February 3, 1943, entered by Mr. Justice ROBERTS, petitioner's time for filing this application for a Writ of Certiorari was extended to and including April 10, 1943.

Statement of Basis of Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the act of February 13, 1925, Section 347 of Title 28 of U. S. C. A.

Questions Presented.

1. Do Regulations 48 issued by the Commissioner of Internal Revenue correctly interpret the taxing phrase "the first domestic processing" in Section 602½ of the Revenue Act of 1934 (specifically defined therein as "*The first use in the United States* in the manufacture of an article intended for sale") as meaning "the first use in the United States *on and after effective date of the act?*"

2. Did the Court below err in holding that the rule of prospective operation of statutes requires an interpretation of the word "first" as meaning "first *after the effective date of the tax*" and justifies the interpolation of the words above italicized, or should its application "merely result in imposing the tax upon those processings within the statutory definition which actually took place after the effective date of the act, not in modifying the definition so as to impose the tax upon transactions which upon the normal application of the rule would have been exempt" as stated by Judge MARIS in his dissenting opinion?

3. Did the Court below err in holding that an amendment of Section 602½ passed in 1936 shows that Congress intended the first domestic processing to mean the first such processing after May 10, 1934 (which is in effect a holding that every "first domestic processing" is a taxable processing), when the express language of the 1936 amendment recognizes in exemption clauses (1) and (2) thereof that there would be previous first domestic processings taxed under this section and previous first domestic processings which were untaxed?

4. Did the Court below err in failing to apply the principle that doubts as to the construction of tax statutes should be resolved in favor of the taxpayer?

Reasons Relied Upon for the Allowance of the Writ.

1. The Circuit Court of Appeals for the Third Circuit has decided a federal question, viz., the meaning of a federal statute, in a way which is in conflict with applicable decisions of this Court in that it has arrived at the meaning which it attributes to the statute by a distorted and wholly novel application of the rule of prospective operation of statutes at variance with the statement and application of that rule in cases heretofore decided by this Court. The Court below has used the rule of the prospective operation of a statute as a reason for interpolating words into an enactment, *i. e.*, as a reason for construing the words "the first" as meaning "the first after the effective date of the tax" whereas that rule as established by this Court merely means in a case of this character that the tax shall apply only to those transactions coming within the statutory definition which occur on and after the effective date of the tax, and shall not apply retroactively to transactions occurring prior to said date. "Ordinarily statutes establish rules for the future, and they will not be applied retroactively unless that purpose plainly appears" (*Brewster* v. *Gage*, 280 U. S. 327, 337); "The initial admonition is that laws are not to be considered as applying to cases which arise before their passage unless that intention be clearly declared." (*Shwab* v. *Doyle*, 258 U. S. 529, 534.)

2. While the Circuit Court of Appeals for the Second Circuit, in *Loose-Wiles Biscuit Company* v. *Rasquin*, 95 F. (2d) 438, and the Circuit Court of Appeals for the Third Circuit in the cases at bar, have both construed the phrase "the first domestic processing" as meaning "the first domestic processing after the effective date of the tax," the Circuit Court of Appeals for the Third Circuit in its opinion

in the cases at bar expressly rejected the sole ground upon which the Circuit Court of Appeals for the Second Circuit arrived at that conclusion; and the Circuit Court of Appeals for the Second Circuit did not in its opinion adopt any of the grounds upon which the Circuit Court of Appeals for the Third Circuit later reached its conclusion, although those grounds were urged upon it by the Government.

3. The question of statutory construction here involved has been passed upon by United States courts in six cases. While they do not thus far present a situation in which a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter, they do present such a conflict of decisions among six different courts and such a conflict of reasoning between Circuit Courts of Appeal that the conflict should, we submit, be resolved by this Court. In three cases in District Courts in the Sixth and Seventh Circuits Section 602½(a) has been construed as petitioner contends. The most recent of those decisions was rendered after the first decision by the Circuit Court of Appeals in the instant case, the District Court expressly refusing to follow the Circuit Court of Appeals in the instant case. The decision for the taxpayer in that case is on appeal to the Circuit Court of Appeals for the Seventh Circuit, and is set for argument on April 20. In three of the six cases (including the instant case and the *Loose-Wiles* case *supra*) Section 602½(a) has been construed in accordance with the Government's contentions *but with dissents in the instant case and one other*, and in the *Loose-Wiles* case without any presentation to or consideration by the Court of the fact that the phrase "the first domestic processing" was carried over from the Agricultural Adjustment Act passed in the previous year by the same Congress (hereinafter called A. A. A.) or of the fact that it was construed in that act

by the Treasury Department prior to the enactment of Section 602½ as meaning the earliest domestic processing. Neither were there presented to or considered by the Court in the *Loose-Wiles* case the occasion and purpose of Section 602½ as evidenced by the debates or the reports of congressional committees thereon, or the fact that the context of the phrase "the first domestic processing" in an amendment of Section 602½ passed in 1936 is incompatible with any idea of ratification of the construction of that phrase in Regulations 48. These six cases, in chronological order, and the present status of each, are as follows:

(a) *Armour & Company of Delaware* v. *Carter H. Harrison, Collector of Internal Revenue,* not officially reported but reported in C. C. H. Fed. Tax Service, 1937, Vol. 4, Par. 9507, 19 A. F. T. R. 1347 (1937, U. S. District Court, Northern District of Illinois, Eastern Division, BARNES, J.). This was a suit to recover taxes levied under Section 602½ based, as to part of the tax sought to be recovered, on facts similar to those presented by the cases at bar. The Court construed Section 602½ as petitioner contends. Judgment was entered for plaintiff for $172,962.63 and interest. The Government appealed but upon stipulation between the parties the appeal was dismissed and the judgment was settled by payment of the judgment in full with some interest thereon. 95 F. (2d) 993.

(b) *Cincinnati Soap Company* v. *United States,* 22 F. Supp. 141 (1938, District Court, Southern District of Ohio, DRUFFEL, J.). The precise issue involved in the instant case was there raised by a demurrer interposed by the Government. The demurrer was overruled, Section 602½ being again construed as petitioner construes it. The Government elected to try out the issues of fact instead of asking a review on appeal of the question of law. The case is still awaiting trial on the merits in the District Court.

(c) *Loose-Wiles Biscuit Company* v. *Rasquin*, 95 F. (2d) 438 (1938, C. C. A. 2nd; Cert. Den. 305 U. S. 611). Section 602½ was construed as the Court below has construed it, the decision resting upon a holding that the 1936 amendment of Section 602½ constituted Congressional approval of the Regulations. The taxpayer in that case failed to call to the attention of the Court the facts with respect to the 1936 amendment which preclude any such deduction therefrom (*infra*, pp. 21, 25-27) and the Court itself did not analyze the amendment but merely noted that it repeated the phrase "the first domestic processing." This is also the case mentioned above in which the legislative history of Section 602½ was not presented to the Court. (For that history see *infra*, pp. 16 to 21.)

(d) *Tasty Baking Company* v. *United States*, 38 F. Supp. 844 (Ct. Cl. 1941), Cert. Den. 314 U. S. 654. By a divided court Section 602½ was construed as the Court below has construed it. Judge LITTLETON dissented. The majority opinion by JONES, J. rested chiefly on the *Loose-Wiles* case, *supra*, and on the denial by this Court of a writ of certiorari in that case which was stressed in the opinion. Again there was no discussion in the opinion of the legislative history of the act and no analysis of the 1936 amendment.

(e) *Durkee Famous Foods* v. *Harrison*, 46 F. Supp. 642, 651 (District Court, Northern District of Illinois, Eastern Division, 1942, SULLIVAN, J.). Section 602½ was construed as petitioner construes it. The Court did not follow the decision in the *Loose-Wiles* case, *supra, and expressly refused to follow the original decision of the Circuit Court of Appeals in the case at bar,* though both of those decisions were before that Court. The Court held that it was not "a reasonable interpretation of Section 602½ to construe the language there used as meaning 'first after the effective date

of the act' " in view of the derivation of the language of Section 602½ from the Agricultural Adjustment Act, the administrative interpretation of "first domestic processing" as used in that Act, "the apparent adoption by Congress of that interpretation by defining the taxing phrase in Section 602½ to mean 'the first use in the United States' without adding the further phrase 'after the effective date of the Act', which phrase was supplied by the Commissioner in the Regulation." The Court stated its belief that "it is clear that Congress intended to and did levy the tax under Section 602½ upon the first use of the imported oils after they reached the United States, with no thought of taxing any subsequent or later use thereof." An appeal by the Government is now pending in the Circuit Court of Appeals for the Seventh Circuit and, as noted, is set for argument on April 20.

(f) *Colgate-Palmolive-Peet Company* v. *United States* (the instant cases). Decided against the petitioner March 31, 1942 by a unanimous court. Reargued and again decided against the petitioner on August 21, 1942 by a divided court. Judge MARIS, who had concurred in the original decision, wrote a dissenting opinion in which he accepted petitioner's construction of the statute and expressed agreement with Judge SULLIVAN's decision in the *Durkee Famous Foods* case.

4. The wavering of the Circuit Court of Appeals for the Third Circuit, disclosed by successive changes in its opinion, and obvious errors in its opinion, are such as to indicate that the question here presented should be decided by this Court.

(a) The Court held that the doctrine of the prospective operation of a statute points to the word "first" as meaning "first after the effective date of the tax." This is erroneous because, *inter alia*, either

construction of the word "first" gives to the statute a wholly prospective operation.

(b) The Court held that Treasury Regulations 48 were made applicable to Section 602½ of the Revenue Act of 1934 by Section 602½(f) of that act. That cannot be true because Treasury Regulations 48 were not issued until more than three months after the enactment of Section 602½(f).

(c) The original opinion stated that since the promulgation of the Regulations Congress "amended" Section 602½ without any indication of disapproval of the Regulations, in that by Section 402 of the Revenue Act of 1935 Congress imposed a compensatory tax upon the importation of articles produced from the oils named in Section 602½. In connection with this statement the Court twice changed its opinion. The Court in its second (majority) opinion upon rehearing said that it had been in error in stating that Section 402 was such an amendment but said that Congress dealt therein "with a subject matter closely allied to that contained in Section 602½ and in doing so indicated no disapproval of the interpretation put upon that section by the Treasury Department," but the Court expressed the opinion "that these facts furnish some evidence that Congress *was not dissatisfied* with the Treasury Department's interpretation." In an order entered November 11, 1942 denying a petition for a second rehearing the Court ordered that there be deleted from its prior (majority) opinion the statement "that these facts furnish some evidence that Congress was not dissatisfied with the Treasury Department's interpretation."

(d) The original opinion states that study of the 1936 amendment to Section 602½ leads to the conclusion that Congress intended to tax the oils or combinations designated in Section 602½ and not previously taxed under that section, whether processed prior to the passage of the 1934 Act or not. This apparently rests on the description of that amendment and of the changes made in it in Conference Committee which immediately precedes the above statement in the opinion. That description is wrong and omits the most significant feature of the changes made by the Conference Committee (Brief, pp. 25-27, *infra*).

(e) In its original opinion the Court expressly rejected the contention of the Government that the amendment of 1936 to Section 602½(a) constituted approval by Congress of Regulations 48. Again the Court twice changed its opinion. In its second (majority) opinion the Court stated that it had been in error in this ruling and that the Circuit Court of Appeals for the Second Circuit had been right in holding in the *Loose-Wiles Biscuit Company* case that the amendment did constitute approval—the sole ground of the decision in that case. However, in its order denying our petition for a second rehearing the Court below retracted its endorsement of this contention, thus returning to its original position that the amendment did not constitute approval of the Regulations.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to

certify and send to this Court, on a day to be designated, a full transcript of the record and all proceedings in the Circuit Court of Appeals had in these cases, to the end that these cases may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that petitioner be granted such other and further relief as may seem proper.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Grounds for Allowance of Writ.

The discussion below in Part III of this brief establishes, we submit, that the Court below has decided a federal question, viz., the meaning of Section 602½, in a way which is in conflict with decisions of this Court. Purporting to apply the rule of prospective operation of statutes the Court below has in fact applied a wholly novel doctrine that when Congress refers to "the first domestic processing" it must be taken to mean the first domestic processing in the future.

There is such a conflict of decisions, we respectfully submit, as to present a proper case for the settlement of those conflicts by this Court. While the decisions in conflict with that in the instant case are thus far those of District Courts they are three in number and the decision of Judge SULLIVAN in the *Durkee Famous Foods* case was rendered after the original decision in the instant case which he expressly refused to follow. And in his dissenting opinion in the case at bar Judge MARIS concurred in the views of Judge SULLIVAN.

II.

Petitioner's Case.

The following constitutes petitioner's case:

1. When Congress set up the system of farm benefits under the A. A. A. in 1933 it was necessary to raise revenue to finance them. Accordingly the A. A. A. provided for a revenue tax on the domestic processing of certain agricultural commodities and under the caption "Supplementary Revenue Provisions" provided further in Section 16(a) for a floor stock tax on such of those commodities already processed and their products as might be on hand when the processing tax went into effect.

2. Most of those commodities, like the foreign oils involved in this case, were commonly subjected in the ordinary course to successive domestic processings. It was necessary with them, as later with those foreign oils, to designate which domestic processing was to be taxed. Congress designated in the A. A. A. "the first domestic processing" (Appendix p. 29).

3. That meant, everyone agrees, the earliest domestic processing. *Regulations 81 issued under the A. A. A. so construed the phrase.* The Regulations specifically recognized that "the first domestic processing" might be completed before the effective date of the tax and that the processing tax would not in that case attach to the particular quantity of the commodity (Appendix p. 34). The Court below recognized that (Rec. p. 42).

4. The inclusion in the commodities subject to this A. A. A. tax of domestic products which had to compete with foreign vegetable oils immediately put those domestic products at a disadvantage. So the same 73rd Congress which

in 1933 enacted the A. A. A., in 1934 enacted Section 602½ as a remedy. That was the reason for Section 602½. (Appendix p. 35 *et seq.*) The remedy was the imposition upon the foreign oils also of a similar tax on "the first domestic processing".

5. Congress selected that remedy instead of the usual duty because Congress was precluded by the Philippine Independence Act from levying a duty on coconut oil from the Philippine Islands except on importations in excess of 200,000 long tons a year.[1] So Congress levied a processing tax in order to effect the protection which otherwise would have been effected by a duty. The Court below recognized that (Rec. p. 44).

6. Five of the seven subsections of Section 602½ were taken almost in their entirety and practically verbatim from the A. A. A., including the language levying a tax on "the first domestic processing." (See parallel column comparison, Appendix pp. 29-33.)

7. Congress did not indicate that it used the phrase "the first domestic processing" in 1934 in any different sense than in 1933 in the Act from which it was transplanted. This in spite of the fact that it was careful in Section 602½ to define the phrase. It defined it to mean "the first use in the United States"—*of these foreign oils*—"in the manufacture of an article intended for sale". This was an incorporation into Section 602½ of the administrative interpretation already given to the phrase.

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[1] There is no dispute as to that. In the Senate the debates centered around the tax on coconut oil and whether such tax constituted a moral if not a technical legal violation of the Philippine Independence Act which specifically permitted the importation without duty of 200,000 long tons of Philippine coconut oil each year. (Cong. Rec. Vol. 78, pp. 6308-6324.)

8. The tax so levied upon "*the first use in the United States*" etc. of these foreign oils was a substitute for a duty. They could not be taxed when they entered the country, so they were taxed at the first available point within the country.

9. A duty would not have reached the oils involved in this suit which were already within the country on the date when the 1934 Revenue Act became effective. But Section 602½ is made to reach them by an interpolation by the Treasury Department of the words "on and after the effective date of the tax."

10. Construed according to the normal meaning of its language Section 602½ has as nearly the same effect that a duty would have as the different natures of the two taxes permit. The construction put upon the section by the Government gives it a much wider scope in that it is made thereby to apply to oils already in this country and already domestically processed.

11. The Congressional debates show that *the specific purpose of Section 602½ was to restrict future imports* (Appendix pp. 35-39). Nowhere in the Congressional debates and committee reports is there any reference to oils which might be on hand when the tax went into effect.

12. Congress has been passing acts for the protection of American products for more than a century and has never in that connection concerned itself with anything but future imports. It has never concerned itself with foreign products already in this country.

13. The purpose of Section 602½ is protection. No protection was afforded American farmers by so construing the section as to tax foreign oils already domestically processed and in course of conversion into finished products.

The taxation of those oils, which were already in the hands of manufacturers on the effective date of the tax, could not bring about a substitution of domestic oils for such foreign oils and, since they were not held for sale, could not affect the domestic price level.

14. House Report No. 704 which accompanied the introduction of the Revenue Bill of 1934 stated with respect to Section 602 (later renumbered 602½), *inter alia*: "To prevent avoidance of the tax by the performance of preliminary processing *outside of the United States*, the tax is likewise imposed upon *the first processing in the United States* of mixtures or combinations in chief value of coconut or seasame oil [the only oils originally included in the section] or of both oils"—a clear indication that "first" is used with relation to the entry of the oils into this country, *i. e.*, the earliest use in the United States (Appendix p. 39).

15. Similarly, House Conference Report No. 1385 explains parenthetically that "first domestic processing" is "defined as *the first use in commercial manufacture or production*" (Appendix p. 39).

16. Section 602½ (then Section 602) as it went to conference included in the taxable oils imported whale oil, imported fish oil and imported marine-animal oil. The Conference Committee shifted these oils to an import tax section, which was not precluded by the Philippine Independence Act, leaving the vegetable oils in the processing tax section, and the bill passed in that form. The House Conference Committee in its Report No. 1385 summarized the effect of that shift. The report stated that the amendment "changes the point of imposition of the tax in the case of imported whale oil, imported fish oil and imported marine-

animal oil to the importation instead of the first domestic processing" (Appendix p. 40).

17. If "the first domestic processing" had meant "the first after the effective date of the tax" an important effect of shifting these oils would have been to relieve all these oils already in the country and already domestically processed from taxation, to which under the processing tax *so construed* they would have been subject had the shift not been made; and surely House Conference Report No. 1385 would have mentioned so important an effect. If on the other hand, "first" means "earliest," a shift would have produced no such effect. The report mentions no such effect, presumably because the intended meaning of "first" was not such as to produce that effect but was its normal meaning of "earliest".

18. The House Ways and Means Committee was urged to supplement the processing tax in Section 602½ with a floor stock tax, as had been done in A. A. A. Such a tax would have reached the oils involved in this suit and all other domestically processed oils on hand in the United States on the effective date of the section. But the Committee declined to follow this course. No floor tax was enacted (Committee on Ways and Means Hearings, Revenue Revisions 1934, p. 600).

19. That was the picture on the day when Section 602½ was enacted. Those were the facts available to the Commissioner of Internal Revenue when he came to issue his regulations on August 17, 1934.

20. Nevertheless, on August 17, 1934, the Treasury Department issued the Treasury Regulation under review, this time construing "the first domestic processing" as meaning "the first after the effective date of the tax."

21. In 1936 Congress amended Section 602½. Among the changes effected by the amendment was the introduction of two clauses exempting, respectively, certain fatty acids and salts (Clause 1) and certain mixtures and combinations (Clause 2). The exemption in Clause 1 was conditioned on "a previous first domestic processing *taxed under this section*" while the exemption in Clause 2 was merely conditioned on "a previous first domestic processing". If "first" meant "first after the effective date of the tax" then every first domestic processing would necessarily be a taxed processing. There would be no assignable reason for the different language of the two clauses. But if "first" be given its normal meaning of "earliest" then there would be first domestic processings which would be taxable (those occurring after the effective date of the tax) and first domestic processings which would not be taxable (those occurring before the effective date of the tax) and the different language of the two clauses becomes explicable. The inclusion in Clause 2, relating to mixtures and combinations, of the words "taxed under this section" would have changed the basis established in the original act for the taxation of mixtures and combinations, which may have been a reason for not doing it. The inclusion of that phrase in Clause 1, relating to fatty acids and salts, changed nothing because prior to the 1936 amendment fatty acids and salts were not taxed (Appendix p. 41).

III.

The Opinions in the Circuit Court of Appeals.

The majority of the Court below recognized that the phrase "the first domestic processing" was derived from Section 9(a) of the A. A. A. and that the Treasury Department construed the phrase as there used to mean "the first

in point of time." But the Court held that it did not follow that the same interpretation should be put upon that phrase as used in Section 602½ because Section 9(a) of the A. A. A, and Section 602½ "cannot be deemed to be *in pari materia*" (Rec. p. 43). How any two statutory provisions could be more truly *in pari materia* we are unable to see. (See parallel column comparison, Appendix pp. 29-33). In any case "first" means "earliest", and not first after some date of reference unless some date of reference is indicated. This meaning is not affected by the presence or absence of a supplementary floor stock tax even though such a tax, if provided for, might give further evidence that the word "first" was used in the sense of "earliest".

The Court below recognized that the processing tax levied by Section 602½ was "substituted for an impost", *i. e.*, a duty (Rec. p. 44). It said, however, that it could "see no reason why Congress should not have desired to protect domestic fats against competitive imported oils whether prior to the passage of the act these had been processed within the United States or not." The speculation that Congress might have desired to do that ignores the fact that the debates in Congress show that what Congress was driving at was the restriction of future imports, which is all Congress has ever aimed at in a century of protective legislation (Appendix pp. 35-39), and it ignores the fact that taxation of processed oils already in course of conversion into finished products could not possibly afford any protection.

So on those grounds the Court rejected the normal inferences from the history of Section 602½. It also declined to give the word "first" its literal meaning, though recognizing that "If we take the literal meaning of the word 'first', we must concede that it means in advance of all others, the earliest" (Rec. p. 45). But the Court found: "Two plain sign posts remain to guide us."

First "Plain Sign Post".

The first "plain sign post" is this:

> "First, * * * a statute is presumed to operate on future acts unless a contrary intent is declared. * * * In our opinion the doctrine of the prospective operation of a statute has become so much a part of our law as to require Congress to employ plain words to overcome the presumption that a statute will so operate" (Rec. p. 45).

Implicit in this statement is the view that the statute as construed by petitioner does not operate prospectively and that therefore the statute cannot be so construed in the absence of plain words indicating that Congress intended it to be so construed. Nothing could be farther from the fact. Section 602½ operates prospectively and not retroactively however it be construed. The whole basis of petitioner's case is that the tax is levied upon "the first domestic processing" only when "the first domestic processing" occurs after the effective date of the tax. The taxing language in A. A. A. was construed by the Treasury Department as petitioner construes the same language in Section 602½ and no violence was done thereby to the principle of prospective operation of statutes. No violence is done to that principle by a similar construction of Section 602½.

The principle cannot be invoked to enlarge or add to the statutory definition nor to write into the statute words not put there by Congress.

Whereas this Court has uniformly applied the rule to protect taxpayers from a retroactive application of a tax, the Court below uses the rule as a means of levying a tax.

The rule does not require that second, third, fourth and fifth processings be taken as first processings for the purposes of Section 602½.

Second "Plain Sign Post".

The second "plain sign post" seems to consist of two indicators, of which the first reads (Rec. p. 45):

> "Second, Treasury Regulations 48 * * * construe the phrase 'first domestic processing' as meaning the first use in the United States after the effective date of the Act. The defendant [the Government] points out that these regulations were promulgated by the Treasury Department pursuant to the provisions of Section 1101 of the Revenue Act of 1926. See 44 Stat. 111. Sec. 602½(f) of the Revenue Act of 1934, 48 Stat. 764, provides that all provisions of Section 600 of the Revenue Act of 1926, 44 Stat. 93, not inconsistent with the provisions of Sec. 602½ of the Revenue Act of 1934 shall be applicable in respect to the taxes imposed by Section 602½. In effect, therefore, contends the defendant, Treasury Regulations 48 were made applicable to Section 602½ of the Revenue Act of 1934."

Petitioner takes this recital of defendant's contention as an endorsement of that contention as there does not seem to be any other reason for stating it and the caption indicates that this is part of the "Second" sign post. Regulations 48 were promulgated August 17, 1934—three months *after* the enactment of the 1934 Act and relate exclusively to Section 602½. Those Regulations could not have been made applicable by that Act; they were not in existence at the time it was passed.

The other indicator on the second "plain sign post" was this:

> "Since the promulgation of the regulations referred to Congress on one occasion *amended* Section 602½ without any indication of disapproval of the interpretation of the Treasury Department as to the prospective operation of the statute. By Section 402 of the Revenue Act of 1935, 49 Stat. 1026, Congress imposed a compensatory tax upon the impor-

> tation of articles produced from the oils named in Section 602½" (Rec. pp. 45, 46).

The fact being that Section 402 of the Revenue Act of 1935 was neither an amendment nor a reenactment of Section 602½, the Court stated in its second opinion:

> "Obviously, the word 'amended' was used erroneously [*i.e.* in its original opinion]. Congress did not amend Section 602½, but it dealt with a subject matter closely allied to that contained in Section 602½ and in doing so indicated no disapproval of the interpretation put upon that section by the Treasury Department in Regulations 48. We think that these facts furnish some evidence that Congress was not dissatisfied with the Treasury Department's interpretation providing prospective operation for Section 602½." (Rec. p. 53.)

By order entered November 11, 1942, the Court ordered that there be stricken from its second opinion the sentence: "We think that these facts furnish some evidence that Congress was not dissatisfied with the Treasury Department's interpretation providing prospective operation for Section 602½."

The Court states in the final paragraph of its original opinion but not as a "sign post" that "study of the 1936 amendment" to Section 602½ leads to the conclusion that Congress intended to tax the oils or combinations designated in Section 602½ and "not previously taxed under the section, whether processed prior to the passage of the 1934 Act or not" (Rec. p. 47). That conclusion appears to rest on a description, in the preceding paragraph of the Court's opinion, of the changes made in Conference Committee in the 1936 amendment, which description is wholly wrong and omits the significant feature of those changes. The amendment in the form in which it reached the Conference Committee imposed the tax on the designated oils and upon their fatty acids and salts (fatty acids and salts being newly

added to the taxable articles); and like the original Section 602½ the amendment likewise levied the tax on combinations and mixtures where "there has been no previous first domestic processing" of the taxable ingredient. The Court states in its opinion that "the bill was re-written in committee and the words 'taxed under this section' was added to the phrase '*no* previous domestic processing'." That is not correct. The phrase "*no* previous first domestic processing" is not to be found in the amendment as reported out by the conference committee and finally passed, nor was there a mere addition to existing language of the phrase "taxed under this section." What the committee did was to take out the phrase "no previous first domestic processing" and to introduce for the first time into Section 602½ two exemption clauses (Appendix p. 42). One related to combinations and mixtures and the exemption was conditioned on "a previous first domestic processing" of the contained taxable ingredient. This in effect, though not in form because the exemption form was new, continued the same basis of taxation of mixtures and combinations as had been established in the 1934 Revenue Act. But with respect to fatty acids and salts, newly added to the taxable articles, the exemption was conditioned on "a previous first domestic processing *taxed under this section.*" That is, the tax did not apply to a "fatty acid or salt *resulting from* a previous first domestic processing taxed under this section."[1]

[1] Fatty acids "result from" the "splitting" of an oil into a fatty acid and glycerine. A salt of a fatty acid, such as soap, usually "results from" the simultaneous splitting of an oil and saponification with a caustic of the fatty acid produced by the splitting. Such a domestic splitting of an oil or simultaneous splitting and saponification might have occurred before May 10, 1934, in which event the splitting, "resulting" in a fatty acid, or the simultaneous splitting and saponification, "resulting" in a salt, *i. e.*, soap, would not have been taxed. Or such a domestic splitting of an oil or simultaneous splitting and saponification might have occurred after May 10, 1934, in which event the splitting, "resulting" in a fatty acid, or the simultaneous splitting and saponification, "resulting" in a salt, would have been taxed.

This ruling of the Court fails to give any effect whatsoever to the fact of the two separate exemption clauses with a clear-cut distinction between the two exemptions. This distinction in the two exemption clauses gives meaning and purpose to the creation of the two exemption clauses. If Congress did not intend some differentiation between the two clauses, why the limiting phrase—"taxed under this section"—in the one and not in the other? If this limitation was intended to apply indiscriminately to both exemption clauses, why did Congress deliberately create two exemption clauses, one with and one without the limitation? This limitation may not be read out of the first exemption clause. The amendment must be construed as enacted—without deletion.

The phrase "taxed under this section" cannot be brushed aside as mere surplusage. Some effect must be given to it. But it has no effect and there is no conceivable reason for its insertion if "the first domestic processing" means "the first domestic processing after the effective date of the Act." For then every "first domestic processing" would be taxable; there could be no such thing as an untaxed "first domestic processing." If, however, "first" be taken in its ordinary sense of "earliest" there would be first domestic processings which were taxed viz., those occurring after May 10, 1934, and first domestic processings which were untaxed, viz., those occurring before May 10, 1934. There would be a reason for use of the phrase "taxed under this section."

There is nothing in the Conference Committee Report on the amendment to substantiate the Court's view, as that report simply sets out *in haec verba* the text of the amendment as revised by the Committee (House Conf. Rep. #3068). Nor is there anything in the debates to substantiate the Court's view, the amendment as revised by the Conferees being adopted by the House and Senate without comment.

IV.

The Rule of Doubt.

Judge MARIS concluded his dissenting opinion in the Court below (Rec. p. 56):

> "Consequently I think that the regulation is invalid and that its application violates the settled rule, to which, however, the courts too frequently pay only lip service, that ambiguities in a revenue statute must be construed strictly against the Government and that doubts therein must be resolved in favor of the taxpayer."

Respectfully submitted,

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APPENDIX.

Derivation of Language Used in Section 602½.

We quote below in parallel columns corresponding provisions of the A. A. A., approved May 12, 1933 and Section 602½ approved May 10, 1934:

AGRICULTURAL ADJUSTMENT ACT	SECTION 602½
"Sec. 9. • • • The processing tax shall be levied, assessed, and collected upon *the first domestic processing* of the commodity whether of domestic production or imported, and shall be *paid by the processor.* • • •"	"(a) There is hereby imposed upon *the first domestic processing* of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be *paid by the processor.* • • •"
"Sec. 15 (e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or in chief value from such commodity and imported into the United States or any possession thereof to which this title applies from any foreign coun-	[Section 602½ did not contain any provision for a compensating tax upon imports similar to the compensating tax of Section 15(e) printed opposite this paragraph. However, the idea for holding the tax upon Philippine coconut oil in a separate fund and paying the same over to the Philippine Islands undoubtedly came from the underscored portion of Section

try or from any possession of the United States to which this title does not apply, a *compensating tax* equal to the amount of the processing tax in effect with respect to domestic processing at the time of importation: *Provided, That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively* • • •."

(Sec. 19(b) of the A. A. A. (*infra*, p. 33) by reference incorporates in A. A. A. the provisions of Sec. 626 of the Revenue Act of 1932, subdivisions (a) and (b) of which read as follows.)

"(a) Every person liable for any tax imposed by this title other than taxes on importation (except tax under section 615, relating to tax on soft drinks) shall make monthly returns under oath in duplicate and pay the taxes imposed by this title to the collector for the district

15(e) of the A. A. A. as shown from the comparison below.)

"(a) • • • All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands • • •."

"(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business

in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

"(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid."

"Sec. 17. (a) Upon the exportation to any foreign country (including the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or in chief value from a commodity with respect to which a tax has been paid under

in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid."

"(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for

this title, the exporter thereof shall be entitled at the time of exportation to a refund of the amount of such tax.

"(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or in chief value therefrom."

"Sec. 18. (a) If (1) any processor, jobber or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this title, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax to process for such exportation any article with respect to which a tax is imposed by this section."

"(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder

contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

"(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this title. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee."

"Sec. 19. * * * (b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * *"

of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consumated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee."

"(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section."

Appendix

Article 7 of Treasury Regulations 81 Issued Under the A. A. A.

"Art. 7. When tax attaches.—The tax attaches upon the first domestic processing of the commodity. Where some part of the first domestic processing of a particular quantity of the commodity takes place during the period when the tax is effective, the tax attaches notwithstanding that some portion of the first domestic processing of such quantity takes place before or after such period." (As originally promulgated July 12, 1933.)

"Art. 7. When tax attaches.—The tax attaches *at the beginning* of the first domestic processing of the commodity. When the first domestic processing *begins before the effective date, no tax attaches,* although it is not completed until after the effective date. When the first domestic processing begins while the tax is in effect, it is subject to the processing tax, notwithstanding it is not completed until after the tax is terminated." (As amended September 20, 1933.)

"Art. 7. When tax attaches.—The tax is imposed upon *the first domestic processing,* and is measured by the amount of the commodity put into such processing. The tax attaches to a particular quantity of the commodity (1) *if it is in process on the effective date, provided the first domestic processing has not been completed prior to that date,* or (2) if the first domestic processing is begun during the period while the tax is in effect, provided it is completed before the termination of the tax. Where the first domestic processing of a particular quantity of the commodity is completed prior to the effective date, but on the effective date such quantity is in secondary processing, it is subject to the tax on floor stocks (see Regulations 82)." (As amended November 2, 1933 retroactively to July 9, 1933.)

Appendix

Extracts From the Congressional Debates Showing That Both Those Who Favored and Those Who Opposed Section 602½ All Recognized That Its Specific Purpose Was to Restrict Future Importations.

"On account of the unusual conditions existing it was thought by a good many that as we were placing a processing tax on domestic commodities and limiting the production of our farmers that we might put some *restriction on the commodities from abroad* that compete with our American commodities." (Chairman Doughton of the House Ways and Means Committee—Cong. Rec. Vol. 78, p. 2513.)

"How can this be done (i. e. how can prices be raised) as to dairy products, meat products, animal fats and cottonseed and other vegetable oils, *if imported oils are permitted to flood our markets* duty-and-tax-free and sold at 2½ cents per pound at the American seaboard? * * * Fat hogs and fat cattle are dirt cheap because *foreign oils have displaced our lard and fats* in our home markets." (Congressman Shallenberger—Cong. Rec. Vol. 78, p. 2529.)

"The large users of vegetable oils naturally oppose this tax *because it will tend to force them to the use of American-produced fats and oils.*" (Congressman Knutson—Cong. Rec. Vol. 78, p. 2614.)

"Imported coconut and sesame oils compete directly and indirectly with domestic fats and oils. This competition occurs chiefly with cottonseed oil, lard, tallow, and butter. *Under the Agricultural Adjustment Act, Congress has attempted to restore agricultural prices to pre-war parity: but this legislation fails to take care of the competition of these foreign oils with domestic oils and fats.* While domestic production is being restricted, imported oils and fats are coming into this country in increasing quantities. * * *" (Congressman Treadway—Cong. Rec, Vol. 78, p. 2658.)

"The amount of this tax is equivalent to 200 percent on the current market price of coconut oil. No industry could bear that tax and survive and it is very clear from their statements before the House, that the proponents of this tax are not expecting revenue but are seeking only to prevent the importation of coconut oil. • • •

"Many members of this House have taken advantage of this debate to express themselves more or less vehemently *in favor of the total exclusion of coconut oil and are in favor of this tax as a means to that end.*" (Congresswoman Kahn—Cong. Rec. Vol. 78, p. 2785.)

"As every member knows, practically the entire amount of copra and coconut oil used in Continental United States comes from the Philippine Islands and the imposition of this so-called 'excise tax' is nothing more or less than the imposition of a *prohibitive tariff* on a people under the American flag." (Congressman Welch—Cong. Rec. Vol. 78, p. 2793.)

"I have been approached by people from my own state who were over here by the dozens saying they wanted this tax imposed *in order to keep Filipino products out of this country.* That is all that is behind it. There is not an ounce of revenue in it." (Senator Tydings—Cong. Rec. Vol. 78, p. 6312.)

"• • • we are only treating the Filipinos as we are treating our own people *when we put similiar taxes* on their products." (Senator Reed—Cong. Rec. Vol. 78, p. 6312.)

"I am sure there are a good many Senators here who want to abide by the independence act, but, at the same time, *they desire to put a fair limitation on imports.*" (Senator Harrison—Cong. Rec. Vol. 78, p. 6314.)

"Mr. President, if there is a processing tax upon hogs, why cannot a competitive tax be levied upon coconut oil if

such oil comes in competition with our product?" (Senator Byrnes—Cong. Rec. Vol. 78, p. 6314.)

"What good does it do to reduce our own production of oil if we are going to permit the Philippines or the Africans or the people in Borneo or Java or the other islands of the seas simply to fill up the gap we are trying to create by their shipping us some more of their oil that does not require any labor to produce." (Senator Connally—Cong. Rec. Vol. 78, p. 6316.)

"I believe some of this oil will be excluded, because the Senator knows that whenever we put a duty on any article there is a certain deterrent effect, and *to some extent it will lessen imports.*" (Senator Connally—Cong. Rec. Vol. 78, p. 6316.)

"The processing tax which was inserted in the bill by the House provided for a tax of 5 cents a pound upon coconut oil and copra. Its effect, if unmodified, would be *the same as though we had levied a tariff tax.*" (Senator Norris—Cong. Rec. Vol. 78, p. 6380.)

Senator Reed of the Senate Finance Committee said:

"We could extend the A. A. A. by an amendment to cover the Philippines."

to which Senator Borah replied:

"*That is really what we are doing in this bill.*" (Cong. Rec. Vol. 78, p. 6381.)

"This tax is intended on its face to be a prohibitive tax. It is not included in this bill for the purpose of raising revenue. *It is for the purpose of establishing an embargo.*" (Senator Clark—Cong. Rec. Vol. 78, p. 6393.)

"I make the motion because, to my mind, the inclusion in a so-called 'revenue bill' of provisions which are not intended

to raise revenue, *but contemplate an embargo*, is a most dishonest and most vicious system of legislating." (Senator Clark—Cong. Rec. Vol. 78, p. 6395.)

"Thus the tax is no different in effect from the several processing taxes levied by the A. A. A. upon basic farm commodities. The tax is not laid at the custom house but upon the first domestic processor." (Congressman Reed—Cong. Rec. Vol. 78, p. 7246.)

"The purpose of this action is to exclude Filipino products, not to raise revenue.

"• • • Even so, if this were a revenue tax, we might justify it on some vague ground, but this is a tariff tax and nothing else, *put on to exclude an article which we do not produce in the United States."* (Senator Tydings—Cong. Rec. Vol. 78, p. 7976.)

Congressman Hill of Washington was the Chairman of the Ways and Means Subcommittee which drafted the Revenue Bill of 1934 and he presented the Conference Report to the House for its action. In the course of such presentation, he was asked by Congressman McDuffie (Alabama) (Cong. Rec. Vol. 78, p. 7833):

"Does the gentleman not believe that under the 3-cent tax or the 5-cent tax there will be very little money paid into the Treasury as the result of this law?"

Mr. Hill:

"That is probably true. That is the hope of the dairymen, I will say."

The foregoing quotations not only show that Section 602½ was intended specifically to restrict future imports but also that it was enacted because of the taxes provided for in the A. A. A. and that it was not a revenue measure.

Messrs. Doughton, Shallenberger, Knutson, Treadway, Hill, Harrison, Byrnes, Connally, Norris, Sen. Reed and Cong. Reed were for the bill. Messrs. Kahn, Welch, Tydings and Clark were against the bill.

Extract From House Report No. 704 Submitted by the House Ways and Means Committee Explaining Section 602½ (At that Time Sec. 602).

"Section 602.—Tax on coconut and sesame oils: This section imposes a processing tax on coconut oil and sesame oil. 'Processing' is defined as the first use of the oil in the manufacture or production of an article for sale. The tax applies to processing in the United States including the territories, but not the possessions. To prevent avoidance of the tax by the performance of *preliminary processing outside of the United States*, the tax is likewise imposed upon *the first processing in the United States* of mixtures or combinations in chief value of coconut or sesame oil or of both oils."

House Conference Report No. 1385 Explaining the Changes Made by the Conferees in Section 602½.

"Amendment No. 153: The House bill imposed a tax of 5 cents per pound on the first domestic processing (*defined as the first use in commercial manufacture or production*) of coconut oil, sesame oil, or combinations or mixtures brought into the United States in chief value of either or both such oils.

"This amendment reduces the rate of tax to 3 cents per pound. It also adds palm oil, palm kernel oil, sunflower oil, perilla oil, imported whale oil, imported fish oil (except cod and cod-liver oil), and imported marine-animal oil to the

taxable oils and taxes combinations of the oils enumerated in the section and mixtures containing substantial quantities of any one or more of such oils. Palm oil used in the manufacture of tin plate is exempted from the tax. All taxes collected under the subsection on products of the Philippines are to be held as a separate fund and paid into the treasury of the Philippines, but this provision is to be inoperative if the Philippine Government by any law provides for any subsidy to be paid to producers of copra, coconut oil or allied products.

"The House recedes with an amendment which (1) taxes the oils enumerated in the Senate amendment, except sperm oil, perilla oil, and halibut liver oil; (2) taxes combinations or mixtures containing substantial quantities of taxable oils with respect to which there has been no previous first domestic processing; (3) retains the rate of 3 cents per pound on all articles taxable, except that an additional tax of 2 cents (making a total of 5 cents) per pound is imposed on coconut oil (and combinations or mixtures containing substantial quantities of coconut oil) unless the oil is the product of the Philippines or other possessions or produced from materials from the Philippines or other possessions, or was in the United States on or before the same day, or was contracted for, or produced from materials contracted for, before April 26, 1934; (4) *changes the point of imposition of the tax* in the case of imported whale oil, imported fish oil, and imported marine-animal oil to the *importation* instead of *the first domestic processing;* and (5) provides for payment to the Philippine treasury of taxes collected on coconut oil, and mixtures containing coconut oil of Philippine origin or produced from Philippine materials."

Appendix

Section 602½ as Amended by Section 702 of the Revenue Act of 1936.

"Sec. 702. Processing Tax on Certain Oils.

"(a) The first sentence of section 602½ of the Revenue Act of 1934 is amended to read as follows:

'(a) There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, but the tax under this section shall not apply *(1)* with respect to any fatty acid or salt resulting from *a previous first domestic processing taxed under this section* or upon which an import tax has been paid under section 601(c)(8) of the Revenue Act of 1932, as amended, or *(2)* with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been *a previous first domestic processing* or upon which an import tax has been paid under such section 601(c)(8).'

"(b) Notwithstanding the provisions of subsection (a) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or such oil contained therein was imported prior to the effective date of this title, shall be taxed in accordance with the provisions of section 602½ of the Revenue Act of 1934 in force on the date of the enactment of this Act."

Appendix

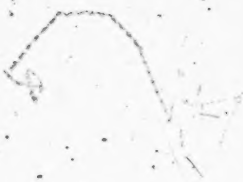
1936 Amendment to Section 602½(a) as Originally Passed by the Senate and as Subsequently Revised by the Conference Committee and Finally Passed.

Senate Amendment

"(a) There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts with respect to any of which oils, fatty acids, or salts there has been *no previous first domestic processing* and no import tax has been paid under section 601(c)(8) of the Revenue Act of 1932, as amended, a tax of 3 cents per pound to be paid by the processor."

Revised Amendment

"(a) There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, *but the tax under this section shall not apply (1)* with respect to any fatty acid or salt resulting from *a previous first domestic processing taxed under this section* or upon which an import tax has been paid under section 601(c)(8) of the Revenue Act of 1932, as amended, or *(2)* with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been *a previous first domestic processing* or upon which an import tax has been paid under such section 601(c)(8)."



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